



September 23, 2016

Mr. James Butler  
601 Carlson Parkway  
Suite 1050  
Hopkins, MN 55305

Dear Mr. Butler:

This is in response to your U.S. General Services Administration (GSA) Freedom of Information Act (FOIA) request (GSA-2016-000957), dated July 14, 2016 in which you requested:

"[a] copy of the following documents [or documents containing the following information] be provided to me: all ESCO responses to the Request for Proposal (RFP) for the General Services Administration project #777 (GSA Fallon Building - Baltimore) awarded on 4/10/2014 to NORESKO."

You then clarified your request on July 15, 2016 as follows:

"1. I do not know the RFP number nor the contract number. I only know the project number to be 777. I am not, however, looking for the RFP itself, but rather the responses written by every Energy Service Company competing for the project. The solicitation number for the project may be CLR-0002-03\_24\_2014."

"2. The project was titled "GSA Fallon Building, Baltimore" and is project number 777."

"3. I am seeking records from every Energy Services Company that submitted a response to the Request for Proposals for project 777. I included NORESKO as the winner to help assist your search."

We are granting your request in part and denying in part. The identifying numbers you provided in your request and clarification do not comport with GSA's document numbering system and/or are not associated with an April 10, 2014 award by GSA to NORESKO. However, we were able to locate records pertaining to such award and offer them here. In response to your request, enclosed please find a redacted copy of documents submitted by NORESKO entitled "GSA Fallon Award Schedules 04-07-2014," "GSA G.H. Fallon Federal Building - IGA - Vol I Technical Proposal, Revised 2-

10-14,” and “GSA G.H. Fallon Federal Building - IGA - Vol II Price Proposal, Revised 2-10-14.”

Within the “GSA Fallon Award Schedules 04-07-2014” document, we have redacted columns (d) and (f), “Estimated Annual Cost Savings”, and “Annual Contractor Payments,” respectively, located on Schedule Task Order (TO)-1, “Guaranteed Cost Savings and Contractor Payment”, the measurement and verification (M&V) expenses, implementation cost breakdown and profit rate located on Schedule TO-2, “Implementation Price by Energy Conservation Measure” (ECM), the totality of Schedule TO-3, “Post-Acceptance Performance Period Cash Flow,” the cancellation ceilings located on Schedule TO-5, “Annual Cancellation Ceiling Schedule,” and the totality of the “Financing Termination Liability Schedules.”

Within the document entitled “GSA G.H. Fallon Federal Building – IGA – Vol I Technical Proposal, revised 2-10-14”, we have redacted information concerning NORESO's: 1) development of savings analysis located on unnumbered page 22; 2) treatment of certain hazardous materials located on unnumbered page 27; 3) development of the lighting upgrades located on unnumbered page 30; 4) exhaust rate calculations located on unnumbered pages 38 through 40; 5) development of the M&V plans and Savings Calculation Methods for each ECM located on unnumbered pages 62 through 96; 6) dispute resolution approach located on unnumbered page 67; 7) commissioning process located on unnumbered pages 98 through 106; 8) organizational and project team structure located on unnumbered pages 110 through 113; 9) proposed approach to allocating project risk/responsibility located on unnumbered pages 119 through 125; 9) personnel responsibilities during the Operation, Maintenance, Repair and Replacement (OMR&R) phase located unnumbered page 127; 10) O&M monitoring process located on unnumbered pages 127 through 128; 11) warranties, located on unnumbered pages 129 and 132 through 135 and 12) O&M training located on unnumbered pages 137 through 138.

Within the document entitled “GSA G.H. Fallon Federal Building – Vol II – IGA Price Proposal, revised 2-10-14”, we have redacted information concerning NORESO's: 1) project financing factors consisting of development of the project interest rate, selection of the project financing method, escalation rate of performance period payments and title to equipment, located on unnumbered pages 7 through 8; 2) amount of savings during construction included in the financial schedules and personnel responsible for tracking these savings, located on unnumbered page 8; 3) financing of post-award changes located on unnumbered page 9; 4) method of applying pre-payments to the task order price, statement of whether a set-off commitment is included in the contract and treatment of certain termination for convenience costs as fixed or negotiable, located on unnumbered page 10; 5) anticipated final acceptance timeframe located on unnumbered page 11; 6) personnel responsibilities located on unnumbered page 12; 7) aforementioned Schedule TO-1, columns (d) and (f), located on unnumbered page 17; 8) M&V expenses, implementation cost breakdown and profit rate located on aforementioned Schedule TO-2, located on unnumbered page 18;

9) entire aforementioned Schedule TO-3, located on unnumbered pages 19 through 21; 10) cancellation ceilings located on aforementioned Schedule TO-5, located on unnumbered page 23; 11) entire Financing Termination Liability Schedule located on unnumbered pages 24 through 25; 12) construction budget breakdowns located on unnumbered pages 29 through 41; 13) O&M budget breakdown located on unnumbered page 43; 14) development of the Investor Deal Summary project interest rate located on unnumbered page 46; 15) Investor Deal Summary and the Standard Finance Offers received by NORESO located on unnumbered pages 48 through 56 and 16) methods used to identify potential subcontracting sources and to develop subcontracting goals and the identity of NORESO's Subcontracting Plan administrator located on unnumbered pages 59 through 60.

These redactions are made pursuant to the fourth statutory exemption of FOIA which protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Information is confidential if its disclosure is likely "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." National Parks & Conservation Asso. v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). The Government's ability to obtain necessary information is impaired if "fear of disclosure would induce potential bidders to submit proposals that do not include novel ideas." Orion Research, Inc. v. Environmental Protection Agency, 615 F.2d 551, 554 (1st Cir. 1980). Substantial harm to a firm includes disclosure which would allow a firm's competitors to "estimate and undercut its bids" (Gulf & W. Indus., Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1979)) hire away its employees (Abou-Hussein v. Mabus, 2010 U.S. Dist. LEXIS 115032, at \*37 (D.S.C. Oct. 28, 2010)) or benefit from the firm's efforts to develop a subcontractor network. Id.

Disclosure of information on NORESO's TO Schedules, its project financing information, cost breakdowns and project terms and conditions would allow a competitor to discover information concerning NORESO's pricing strategy and to thereby potentially estimate and undercut NORESO's offers on future projects. Disclosure of information concerning NORESO's subcontracting plan could allow a competitor to mimic NORESO's outreach efforts and/or hire away its plan administrator, thereby benefiting from NORESO's efforts to develop a subcontractor network. Disclosure of information regarding NORESO's development of ECMs, their savings analyses and various calculations, their plans for personnel organization and management, their development of the commissioning, training, M&V and O&M monitoring plans, their methods for dispute avoidance/resolution and their warranty information would enable a competitor to replicate NORESO's innovative technical and administrative ideas, thus impairing the Government's ability to obtain such ideas in the future. These redactions constitute a denial of this portion of your request. This determination was made independently based upon my analysis and the content of the requested records.

We are withholding, in their entirety, all Energy Service Company (ESCO) responses to GSA's Notice of Opportunity, step 1 dated January 31, 2012 and step 2 dated

March 21, 2012, all Preliminary Assessments submitted by NORESO, all TO Schedules submitted by NORESO prior to NORESO's TO Schedules dated April 7, 2014 incorporated into the TO award, NORESO's Financing Termination Liability Schedule dated February 10, 2014, all Investment Grade Audit (IGA) Volume I: Technical Proposals, submitted by NORESO prior to NORESO's IGA Volume I: Technical Proposal, dated February 10, 2014 incorporated into the TO award, all IGA Volume II: Price Proposals, submitted by NORESO prior to NORESO's IGA Volume II: Price Proposal, dated February 10, 2014 incorporated into the TO award and all Volume III: Attachments, submitted by NORESO prior to NORESO's IGA Volume III: Attachments, dated November 11, 2013 incorporated into the TO award.

These withholdings are made pursuant to the third statutory exemption of FOIA which protects material "specifically exempted from disclosure by statute (other than § 552(b)), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). The National Defense Authorization Act, 41 U.S.C. § 4702 (formerly 41 U.S.C. § 253(b)(m)(1-3)), is a qualifying statute under FOIA exemption three and exempts from disclosure a proposal submitted by a contractor unless that proposal is incorporated into the resultant contract. Sinkfield v. HUD, No. 10-885, 2012 U.S. Dist. LEXIS 35233, at \*13-15 (S.D. Ohio March 15, 2012). Neither the ESCO responses to GSA's Step 1 and Step 2 Notices of Opportunity, nor NORESO's Preliminary Assessments, TO Schedules except those dated April 7, 2014, IGA Volumes I and II except those dated February 10, 2014 and IGA Volume III except that dated November 11, 2013, were incorporated into the resultant contract. These withholdings constitute a denial of this portion of your request.

Within the documents entitled "GSA G.H. Fallon Federal Building – IGA – Vol I Technical Proposal, revised 2-10-14" and "GSA G.H. Fallon Federal Building – Vol II – IGA Price Proposal, revised 2-10-14", we have redacted information concerning the Building Automation System (BAS) located on various pages throughout these documents. These redactions are made pursuant to Subpart F of the seventh statutory exemption of FOIA which permits an agency to withhold "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...(F) could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F). Records containing Sensitive But Unclassified (SBU) information have been determined to fall within this exemption. Our agency has determined that Information concerning a facility's BAS system is SBU information. Therefore, its release would be expected to endanger the life or physical safety of the Fallon building's occupants. These redactions constitute a denial of this portion of your request.

Furthermore, after reasonable search, we were unable to locate the document entitled, "GSA G.H. Fallon Federal Building - IGA - Vol III, Attachments, dated November 11, 2013. The inability to provide this document does not constitute a denial of this portion of your request.

You have the right to appeal denial of the information withheld under FOIA. To do so, you must write within 120 days of your receipt of this letter to the following address:

U.S. General Services Administration  
FOIA Requester Service Center (H1F)  
1800 F Street, NW, Room 7308  
Washington, DC 20405

Your appeal must be in writing and should contain a brief statement of the reason(s) why the withheld information should be released. Please enclose a copy of your initial request and a copy of this letter. Both the appeal letter and envelope should be marked prominently, "Freedom of Information Act Appeal."

This completes our action on this request. Should you have any questions, please contact Karen Janco at 215-446-4571 or by email at [karen.janco@gsa.gov](mailto:karen.janco@gsa.gov). You may also contact the GSA FOIA Public Liaison, Audrey Brooks, at (202) 205-5912 or by email at [audrey.brooks@gsa.gov](mailto:audrey.brooks@gsa.gov) for any additional assistance and to discuss any aspect of your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

*Travis Lewis*

FOIA Program Manager

Enclosures